

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

NEIL L. WEISMAN
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MATTHEW D. FISHER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

CHARLES E. JACKSON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)

No. 71A03-0612-CR-614

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John Marnocha, Judge
Cause No. 71D08-0503-FB-19

July 5, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Charles Jackson appeals his conviction for Aggravated Battery,¹ a class B felony. Specifically, Jackson argues that the State presented insufficient evidence to sustain the conviction and that the sentencing portion of the aggravated battery statute violates the Proportionality Clause of the Indiana Constitution. Finding that the State presented sufficient evidence and that Jackson has waived his constitutional argument on appeal, we affirm the judgment of the trial court.

FACTS

Shortly before 9:00 p.m. on March 14, 2005, James Eiland looked out of a window of his home in South Bend and saw Jackson sitting on top of Dick Priebe in the street, beating Priebe in the face with his fists and pounding Priebe's head into the pavement. Eiland told his wife to call the police and continued to watch Jackson hit Priebe. Twice, Jackson began to leave, but instead returned to continue to beat Priebe. Throughout the encounter, Eiland never saw Priebe fight back or throw a punch. Approximately ten minutes after Eiland began watching, Jackson left the scene.

South Bend Police Officer Daniel Lawecky was dispatched and arrived approximately five minutes later. He found Priebe laying on the ground, unconscious and unresponsive. Priebe stopped breathing while Officer Lawecky was trying to assist him. Officer Steven Noonan arrived at the scene and was securing the area when Jackson returned. Upon learning that Jackson was the suspect in the case, Officer Noonan detained him. After

¹ Ind. Code § 35-42-2-1.5.

reading him the Miranda² rights, Jackson told Officer Noonan that Priebe “brought some shit that he couldn’t handle, and that we rock and rolled.” Tr. p. 65. Jackson admitted that he had put “his hand around [Priebe’s] neck and beat him” during the altercation. Id. Homicide Unit Officer Chris Cronewitter later conducted a videotaped interview in which Jackson admitted that he had been the only one to throw punches in the altercation with Priebe.

Priebe died shortly after the incident and, after an autopsy, forensic pathologist Dr. Joseph Prahlow determined that the cause of death was assault-induced cardiac dysrhythmia and found the toxic effects of ethanol and cocaine to be contributing factors. Dr. Prahlow testified that Priebe had sustained significant injuries to the face and head—including two black eyes, a laceration on his right cheek, multiple lacerations on his left cheek, multiple lacerations on his lips, a bruise on his tongue, and multiple lacerations to the back of his head—and that he had twelve fractured ribs. Although Priebe had an enlarged heart, hypertension, atherosclerotic cardiovascular disease, and a blood alcohol content of .334 as well as cocaine in his system at the time of the attack, Dr. Prahlow concluded that those were factors that contributed to Priebe’s death but that the physical assault was the primary cause.

On March 17, 2005, the State charged Jackson with class B felony aggravated battery. Jackson waived his right to a jury trial, and a bench trial was held on October 23, 2006. The trial court found him guilty as charged. A sentencing hearing was held on November 30, 2006, and the trial court sentenced Jackson to eighteen years imprisonment. Jackson now appeals.

² Miranda v. Arizona, 384 U.S. 436 (1966) .

DISCUSSION AND DECISION

I. Sufficiency

Jackson argues that the State did not present sufficient evidence to prove beyond a reasonable doubt that Jackson committed aggravated battery. While Jackson admits that he committed class C felony battery resulting in serious bodily injury, he argues that his actions were not the proximate cause of Priebe's death and, instead, Priebe died as a result of "natural heart disease with the trauma of the fight being only one of the possible contributing factors and . . . not foreseeable by Jackson." Appellant's Br. p. 9, 18.

The standard of review for sufficiency claims is well settled. In addressing Jackson's challenge we neither reweigh the evidence nor reassess the credibility of witnesses. Sanders v. State, 704 N.E.2d 119, 123 (Ind. 1999). Instead, we consider the evidence most favorable to the verdict and draw all reasonable inferences that support the ruling below. Id. We affirm the conviction if there is probative evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. O'Connell v. State, 742 N.E.2d 943, 949 (Ind. 2001). A conviction may be sustained on circumstantial evidence if such evidence supports a reasonable inference of guilt. Maul v. State, 731 N.E.2d 438, 439 (Ind. 2000).

To convict Jackson of class B felony aggravated battery, the State was required to prove beyond a reasonable doubt that Jackson knowingly or intentionally inflicted an injury on Priebe that created a substantial risk of death or caused serious permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ. I.C. § 35-42-2-

1.5(2). A person engages in conduct “intentionally” if, when he engages in the conduct, it is his conscious objective to do so. Ind. Code § 35-41-2-2(a). A person engages in conduct “knowingly” if, when he engages in the conduct, he is aware of a high probability that he is doing so. I.C. § 35-41-2-2(b).

Jackson’s arguments focus on the fact that, in his opinion, his actions were not the proximate cause of Priebe’s death. However, the victim’s death is not an element of the crime of aggravated battery and the State was not required to prove beyond a reasonable doubt that Jackson proximately caused Priebe’s death. Instead, the State needed to present evidence to prove beyond a reasonable doubt that Jackson knowingly or intentionally inflicted injuries on Priebe and that Jackson was aware of the high probability that his conduct would lead to a substantial risk of death or other injuries included within the definition of aggravated battery. Lush v. State, 783 N.E.2d 1191, 1197 (Ind. Ct. App. 2003).

While Jackson admits that the State presented sufficient evidence to prove that he inflicted the injuries, appellant’s br. p. 18, he argues that the State failed to present sufficient evidence proving that he knowingly inflicted the injuries with the intent to create a substantial risk of death or cause the impairment of the function of a bodily member or organ. Intent is a mental function. James v. State, 755 N.E.2d 226, 230 (Ind. Ct. App. 2001). Absent an admission by the defendant, intent must be determined from a consideration of the defendant’s conduct and the natural and usual consequences thereof. Lush, 783 N.E.2d at 1196. The trier of fact must resort to reasonable inferences based upon an examination of the surrounding circumstances to determine whether, from the person’s conduct and the natural

consequences of what might be expected from that conduct, a showing or inference of the intent to commit that conduct exists. Id.

The State presented evidence that Jackson sat on top of Priebe and punched him in the face and body for approximately ten minutes. Tr. p. 43, 45, 47. During that time, Jackson had his hand around Priebe's neck while he pounded Priebe's head into the pavement and punched him in the face and body. Id. at 45, 47, 65. Twice, Jackson began to leave the scene, only to return and physically assault Priebe further. Id. at 45-47. Priebe did not throw any punches throughout the encounter. Id. at 46.

As a result of Jackson's conduct, Priebe sustained significant injuries to the face and head, including two black eyes, a laceration on his right cheek, multiple lacerations on his left cheek, multiple lacerations on his lips, a bruise on his tongue, and multiple lacerations to the back of his head. Jackson also broke twelve of Priebe's ribs—six on each side of his body. These serious physical injuries are sufficient to sustain Jackson's conviction for aggravated battery, regardless of whether Priebe's subsequent death³ was a direct result of Jackson's actions.

In sum, the State presented sufficient evidence for a reasonable fact finder to conclude that Jackson knowingly or intentionally inflicted injuries on Priebe, that he was aware of the

³ Jackson argues that the facts alleged in his case do not fit neatly into the conduct proscribed by the aggravated battery statute because Priebe died. Essentially, Jackson argues that it would have been more appropriate for the State to charge him with murder, voluntary or involuntary manslaughter, or reckless homicide. However, when a defendant's conduct violates more than one criminal statute, the prosecutor has the discretion to decide whether to prosecute and under which statute to file charges. Helton v. State, 624 N.E.2d 499, 512 (Ind. Ct. App. 1993). Furthermore, Priebe does not direct us to case law holding that it is inappropriate for a defendant to be convicted of aggravated battery if the victim dies.

high probability that his conduct would lead to a substantial risk of death or protracted loss or impairment of the function of a bodily organ, and that he consciously set out to engage in that conduct. Jackson’s unpersuasive arguments on appeal are an invitation for us to reweigh the evidence and address the credibility of witnesses—a practice in which we do not engage when reviewing the sufficiency of the evidence.

II. Aggravated Battery Statute

Jackson argues that the sentencing statute for aggravated battery violates the Proportionality Clause of the Indiana Constitution.⁴ Specifically, Jackson argues that the elements of both a class C felony battery conviction and a class B felony aggravated battery conviction “mirror each other” and can be proven by “the same evidence.” Appellant’s Br. p. 21. Jackson argues, therefore, that the six- to twenty-year sentence range authorized by Indiana Code section 35-50-2-5 for a class B felony aggravated battery conviction is unconstitutional in light of the two- to eight-year sentence range authorized by Indiana Code section 35-50-2-6 for a class C felony battery conviction.

Jackson acknowledges that he did not challenge the constitutionality of the aggravated battery sentencing statute at the trial court level. Id. at 19. Generally, a challenge to the constitutionality of a criminal statute must be raised by a motion to dismiss prior to trial and the failure to do so waives the issue on appeal. Ind. Code §§ 35-34-1-4(b), -6(a)(3); Smith v. State, 727 N.E.2d 763, 766 (Ind. Ct. App. 2000). Because Jackson failed to file a motion to

⁴ Article 1 Section 16 of the Indiana Constitution provides, in part, that “[a]ll penalties shall be proportioned to the nature of the offense.”

dismiss and did not object to the constitutionality of the statute at trial, he has waived this argument on appeal. Adams v. State, 804 N.E.2d 1169, 1172 (Ind. Ct. App. 2004).

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.